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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/722,996	11/26/2003	Ricky Ah-Man Woo	7768MD	9564

27752 7590 07/12/2007
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EXAMINER

HARDEE, JOHN R

ART UNIT	PAPER NUMBER
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1751

MAIL DATE	DELIVERY MODE
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07/12/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/722,996

Applicant(s)

WOO ET AL.

Examiner

John R. Hardee

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 3,4,6-18 and 30-34 is/are pending in the application.
- 4a) Of the above claim(s) 6-10 and 12-14 is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 3, 4, 11, 15-18 and 30-34 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. ____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date ____ | 6) <input type="checkbox"/> Other: ____ |

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
2. Claims 3, 4, 11, 15-18 and 30-34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Trinh et al., US 5,714,137, in view of Behan et al., US 5,676,163 and Wilsch-Irrgang et al., US 5,861,371. The Trinh reference discloses aqueous, odor absorbing compositions for use on inanimate surfaces. The compositions comprise about 0.1% to about 5% by weight of solubilized, uncomplexed cyclodextrin. The compositions are essentially free of any material which would stain or soil fabric, and they have a pH of greater than about 3 (abstract). Suitable cyclodextrins, including combinations of cyclodextrins, are disclosed at col. 5, lines 8+. Cavities should remain uncomplexed (col. 4, lines 8-10, col. 11, lines 59-60). This can be accomplished through the use of aqueous solvents and appropriate choice of perfume materials. Perfume is present at up to about 0.5% (col. 11, lines 40+). Most preferably, at least about 75% of the perfume ingredients should have a Clog P of about 3 or smaller (col. 16, lines 3+), and, most preferably at least about 75% of the perfume materials should come from the table beginning at the middle of col. 12. Note that P. T. buccinal, cymal and hexyl cinnamic aldehyde are among these materials. Materials with a Clog P of this magnitude are relatively hydrophobic, having a thousand-fold preference for octanol over water. Note the disclosure at col. 12, lines 4+, that most preferably at least about 75% by weight of the perfume materials will have molecular weights of about 130 to

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about 290. Polyacrylic acid or polyacrylate may be added, as may soluble zinc salts at about 0.1% to about 10% (col. 17, lines 27+). Suitable surfactants are disclosed at col. 20, lines 13+. These surfactants are taught to solubilize or emulsify undissolved materials such as perfumes. Water soluble cationic polyamines may be added as well. This reference differs from the claimed subject matter in that it does not specifically disclose use of a class I or II aldehyde in the recited amounts, or of an odor blocker in the recited amounts.

Behan et al. teaches at col. 2, line 51 that hexyl cinnamic aldehyde, 2-methyl-3-(4'-isopropylphenyl)propanal, also known as cymal, and 2-methyl-3-(4'-tert-butylphenyl)propanal, also known as P. T. buccinal, are class II aldehydes, and Wilsch-Irrgang et al. teaches at col. 3, lines 7+ that terpenes, including alpha-terpineol, are useful deodorizers in cleaning compositions. Note also the disclosure in applicant's specification at p. 16, lines 15+ that the odor blockers and class I and II aldehydes contemplated for use in these compositions are those disclosed in the cited secondary references.

It would have been obvious at the time the invention was made to make such a composition, because this reference teaches that all of the ingredients recited by applicants are suitable for inclusion in an odor absorbing composition. The person of ordinary skill in the surfactant art would expect the recited compositions to have properties similar to those compositions which are exemplified, absent a showing to the contrary.

In the case where the claimed ranges overlap or lie inside ranges disclosed by the prior art, a *prima facie* case of obviousness exists. *In re Wertheim*, 541 F.2d 257, 191 USPQ 90 (CCPA 1976); *In re Woodruff*, 919 F.2d 1575, 16 USPQ2d 1934 (Fed Cir. 1990). Regarding packaging with instructions, both of these are obvious expedients, and the specific content of the instructions does not add patentable weight.

Regarding applicant's newly added language regarding the presence of a premix applicant is reminded that an invention defined by a product-by-process claim is a product. MPEP 806.05(f), *In re Bridgeford*, 149 USPQ 55. Burden is on the applicant to show product differences in product by process claims. *In re Thorpe*, 227 USPQ 964 (Fed. Cir. 1985); *In re Best*, 195 USPQ 430 (CCPA 1977); *In re Fessman*, 180 USPQ 324 (CCPA 1974); *In re Brown*, 173 USPQ 685 (CCPA 1972). The examiner notes that applicant has not claimed the presence of a premix or of an emulsion, only that a premix which was added to the composition contained an emulsion at the time of addition.

Response to Arguments

3. Applicant's arguments filed June 7, 2007 have been fully considered but they are not persuasive. Applicant has made several arguments regarding the characteristics of the recited emulsion. These arguments are not persuasive because there need be no emulsion present in the composition of claim 30 as now claimed. While an emulsion was added to make the final mixture, no emulsion need be present in the final mixture.

Applicant's arguments regarding tuna and mayonnaise are well taken, but they are not persuasive. To continue the analogy, applicant has claimed tuna to which pre-

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emulsified (process step) oil and egg yolk have been added, not a tuna composition which presently contains mayonnaise. While the person of ordinary skill in the sandwich making art might well consider this to be different from a composition comprising tuna, vegetable oil and egg yolk, the patent laws were not written by deli workers.

Consequently, the examiner must insist upon evidence that the claimed compositions and the prior art compositions are different. Given that the prior art discloses that one may make mayonnaise from the disclosed oil and egg yolks, this may prove difficult. Applicant's arguments of novelty cannot take the place of evidence.

4. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to the examiner, Dr. John R. Hardee, whose telephone number is (571) 272-1318. The examiner can normally be reached on Monday through Friday from 8:00 until 4:30. In the event that the examiner is not available, his

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supervisor, Mr. Douglas McGinty, may be reached at (571) 272-1029.

The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8100.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, appearing to read "J. Hardee", is positioned above the printed name.

John R. Hardee
Primary Examiner
July 9, 2007